RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—MARKETABLE TITLE.—Land had been in the possession of P and his predecessors for twenty-eight years in such a manner that the court found that, beyond a reasonable doubt, title had been established by adverse possession. *Held,* that P could give D, a purchaser, a good and marketable title. *Winer* v. *Hooper* (Md., 1921), 115 Atl. 31.

It is now almost unanimously conceded that a title by adverse possession is a marketable one. *Scott* v. *Nixon,* 3 Dr. & War. (Ir.) 388; *Barnard* v. *Brown,* 112 Mich. 452; and cases cited in 38 L. R. A. (n. s.) 26. A few cases hold the contrary. *Watson* v. *Boyle,* 55 Wash. 141; *Lockhart* v. *Ferrey,* 59 Ore. 179; *Benson* v. *Shotwell,* 87 Cal. 49. The burden is on the vendor to show that all the elements are present which are necessary to establish adverse possession. *Simis* v. *McElroy,* 160 N. Y. 156, 73 Am. St. Rep. 673. Of course, if the contract of sale calls for a record title, adverse possession is not sufficient. *Noyes* v. *Johnson,* 139 Mass. 436. It is said in *Tewksbury* v. *Howard,* 138 Ind. 103, that "title by adverse possession is as high as any known to the law." But, as a practical matter, it would seem that property with a clear record title could be more readily sold than that which has a title based solely on the legal theory of adverse possession. For this reason it seems that the vendor should be required to use every reasonable effort to perfect the record title before invoking the aid of equity to force a vendee to take a title based on adverse possession. For marketable title generally, see 8 MICH. L. REV. 493.

BONA FIDE PURCHASER—PURCHASER NOT SECURING LEGAL ESTATE—PURCHASER NOT PAYING FULL PRICE.—The plaintiff contracted to sell half of a parcel of land which he owned. By mistake the contract called for the whole parcel. The vendee assigned the contract to the defendant, Johnson, who fraudulently executed a land contract to an innocent purchaser, Rogerson (also made defendant), purporting to sell the whole parcel to him. In a suit for reformation of the contracts it was *held,* that the innocent party was a *bona fide* purchaser for value (not discussed) and that as against him the plaintiff was only entitled to a lien on the unpaid purchase money, and that upon payment to the plaintiff of the value of the land included by mistake the latter should convey the whole parcel. *Clark* v. *Johnson,* 214 Mich. 577.

Regarding the rights of a purchaser who has obtained legal title and paid part consideration before receiving notice of a prior equitable claim, the American cases are in conflict. Some courts would give such a purchaser no protection against the owner of the prior equity, except perhaps a lien on any amount still due from the latter to the vendor. *Palmer* v. *Williams,* 24 Mich. 328; *Kilcrease* v. *Lum and Wife,* 36 Miss. 569. Others hold the innocent purchaser entitled to remuneration for the amount paid in good

faith. *Kitteridge* v. *Chapman,* 36 Iowa 348; *Beck* v. *Uhrich,* 16 Pa. St. 499. And others hold that the purchase is valid, the owner of the prior equity being entitled only to a lien on the unpaid purchase money. *Baldwin et al.* v. *Sager,* 70 Ill. 503; *Hardin's ex'rs., etc.,* v. *Harrington, etc.,* 74 Ky. 367. Nor are the American cases in accord on the rule to be applied when the purchaser pays full consideration before notice, but acquires legal title subsequent to notice. Some deny protection to such a purchaser. *Corn* v. *Sims,* 60 Ky. 391; *Louisville & Nashville R. R. Co.* v. *Boykin,* 76 Ala. 560; and references, 2 TIFFANY, REAL PROPERTY (Ed. 2), §566 (p. 2174). Others hold the party entitled to the rights of a *bona fide* purchaser for value. *Carroll* v. *Johnston,* 55 N. C. 120. See also *Dueber Watch Case Mfg. Co.* v. *Daugherty et al.,* 62 Ohio St. 589; and references, 2 TIFFANY, REAL PROPERTY (Ed. 2), §566 (p. 2174). For a discussion of the principles underlying these rules, see POMEROY'S EQ. JUR. (Ed. 4), §§737-743. Where, as in the principal case, the purchaser has never obtained legal title (and especially where, as in this case, the prior equity is coupled with the legal estate), the prior equity should prevail (see *Dickinson* v. *Wright,* 56 Mich. 42), unless upon the theory that the prior equity is in some respect imperfect and intrinsically inferior to the later equity, as in *Hume* v. *Dixon,* 37 Ohio St. 66. See also *Bayley* v. *Greenleaf,* 7 Wheat. 46, and *Campbell, Adm'r.,* v. *Sidwell, Ex'x., et al.,* 61 Ohio St. 179. In the principal case it might be said that the plaintiff's equity of reformation is inferior because his more or less negligent conduct in executing a contract which described the whole lot misled the subsequent purchaser. An element of estoppel is involved.

CARRIERS—CUMMINS AMENDMENT—LIMITATION OF LIABILITY IN BILLS OF LADING.—Eight carloads of grain shipped from grain-producing states to Baltimore, and described in the bills of lading as "for export," were destroyed in transit. Defendant railway paid plaintiffs, according to the terms of the bills of lading, "the value of the grain at the time and place of shipment." Plaintiffs sued for "the full amount of the actual loss," claiming that under the Cummins Amendment the stipulations in the bills of lading were null and void. *Held,* not a shipment within the Cummins Amendment, because in course of shipment to a non-adjacent foreign country, and so the stipulations are valid. *Fahey* v. *B. & O. R. Co.* (Md., 1921), 114 Atl. 905.

The limits within which the federal Act to Regulate Commerce, and its amendments, will apply to shipments of goods are not yet clearly drawn. The Carmack Amendment of 1906 expressly applied to "transportation from a point in one state to a point in another state." Just why the Cummins Amendment of 1915 extended this to include transportation from or to a point in a territory or the District of Columbia, and "to a point in an adjacent foreign country," instead of making a comprehensive inclusion of all interstate and foreign commerce, is not explained, but for some reason a non-adjacent foreign country is excluded. In *Galveston, etc., Ry. Co.* v. *Woodbury,* 254 U. S. 357, see 19 MICH. L. REV. 433, the Supreme Court held that this was broad enough to cover shipment not merely *to,* but also *from,*